A

ADAM PRIMUS VARGHESE ABDULLAH v. KHEE SAN FOOD INDUSTRIES SDN BHD

HIGH COURT, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[ORIGINATING SUMMONS NO: WA-24NCC-455-09-2024]
3 JULY 2025

B

Abstract – *Conversion of an originating summons proceeding to a writ action is only warranted when there are substantial factual disputes that cannot be resolved through documentary evidence. Any proposed counterclaim, which raises distinct legal and factual issues, can be pursued separately, following appropriate procedures.*

C

CIVIL PROCEDURE: *Mode of trial – Conversion – Proceedings – Application for – Application to convert originating summons proceeding to writ action – Whether there were substantial factual disputes and allegations which must be resolved with oral testimony – Whether witness testimony and evidence from third parties necessary to decide claim – Whether cross-examination under O. 38 r. 2 of Rules of Court 2012 sufficient – Whether mere possibility of counterclaim justified conversion of proceedings – Assessment of remuneration claim – Whether could be conducted within originating summons proceeding – Whether documentary evidence sufficient and comprehensive – Companies Act 2016, s. 407(4)*

D

E

COMPANY LAW: *Judicial management – Interim judicial manager – Claim for remuneration – Assessment of remuneration claim – Whether could be conducted within originating summons proceedings – Whether ought to be converted to writ action – Whether documentary evidence sufficient and comprehensive – Whether there were substantial factual disputes and allegations which must be resolved with oral testimony – Whether witness testimony and evidence from third parties necessary to decide claim – Whether cross-examination under O. 38 r. 2 of Rules of Court 2012 sufficient – Whether mere possibility of counterclaim justified conversion of proceedings – Companies Act 2016, s. 407(4)*

F

G

The appellant was appointed as the interim judicial manager of the defendant company by way of an *ex parte* order in the High Court ('JM Suit'). The JM suit was commenced by Maybank Islamic Bhd ('Maybank'), which held 3.34% of the defendant's total debt. The defendant was a wholly-owned subsidiary of Khee San Bhd ('KSB'). The plaintiff served as interim judicial manager from 17 November 2021 to 1 September 2022 and during this period he was assisted by five personnel from his firm. On 4 March 2022, the plaintiff filed an application in the JM Suit for his remuneration ('first remuneration application') covering work carried out from 17 November 2021 to 4 March 2022, totalling 1,336.5 hours at a composite rate of RM800 per hour. On 1 September 2022, Maybank withdrew the JM

H

I

Suit following a settlement reached between the financial institution creditors and KSB. This effectively terminated the plaintiff's position. On the same date, the High Court allowed RM2 million of the defendant's funds to be held by the plaintiff's then-solicitors, pending the determination of the first remuneration application. On 20 March 2023, the High Court dismissed the first remuneration application as premature, finding that the plaintiff had not complied with the prerequisites under s. 407(4) of the Companies Act 2016 ('Companies Act') as the plaintiff filed his first remuneration application without first attempting to obtain the defendant's or the creditors' approval for his proposed fees. The plaintiff appealed to the Court of Appeal, which dismissed the appeal. A subsequent application for leave to appeal to the Federal Court was refused. Following these developments, the plaintiff issued letters to the defendant's creditors proposing fees of RM1,999,435.60 (including SST) for 2,357.87 hours of work carried out between 17 November 2021 and 1 September 2022, as well as ancillary work up to 29 April 2024, at the composite rate of RM800 per hour. The letters were issued to 144 creditors of the defendant. The plaintiff filed the present originating summons seeking approval of his remuneration ('second remuneration application') and submitted a 209-page detailed statement of work and report. The defendant filed encl. 14, seeking to convert the current originating summons proceedings into a writ action pursuant to O. 28 r. 8 of the Rules of Court 2012 ('ROC'). The primary relief sought was for the court to order that the proceedings continue as if the matter had been begun by writ, which would fundamentally change the procedural framework from the current originating summons format to a full trial action. This conversion would enable the defendant to pursue their counterclaim against the plaintiff concerning both the validity of his appointment as interim judicial manager and allegations of misconduct, wrongful acts, and breach of fiduciary duties during his tenure, while simultaneously defending against his remuneration claim of approximately RM2 million. The defendant's justification for the conversion was premised on two main grounds: first, that there were substantial factual disputes and allegations which must be resolved with the benefit of *viva voce* evidence (oral testimony) rather than affidavit evidence alone, and second, that witness testimony and evidence from third parties were necessary to fairly decide both the plaintiff's remuneration claim and the defendant's counterclaim. The defendant argued that the various allegations regarding the reasonableness of time spent, work done, verification of team members' contributions, and the composite hourly rate of RM800 require a live witness examination that could not be adequately addressed through the originating summons procedure. They contended that the current format was manifestly unsuitable for resolving these complex factual disputes, particularly given their challenges to the plaintiff's appointment validity and their allegations of his various misconduct during his management of the company. The issues that arose were (i) whether there

was a requirement for witness testimony to verify work performed by the interim judicial manager's team; (ii) whether cross-examination under O. 38 r. 2 of the ROC insufficient; (iii) whether the RM800 per hour composite rate unreasonable and required scrutiny through trial; (iv) whether numerous entries in the plaintiff's statement of work self-serving, illogical and contained overlapping tasks; (v) whether mere possibility of counterclaim justified conversion of proceedings to a writ action; (vi) whether discovery necessary to uncover various issues and facts that remain unknown; (vii) whether detailed examination through trial required to determine whether claims are justified and to prevent overcharging; (viii) whether plaintiff claimed for remuneration without providing contemporaneous documents to verify alleged work or time spent; (ix) whether there was an alleged decline in the company's financial performance during interim judicial management; (x) whether plaintiff's interaction with third parties required examination through witness testimony; and (xi) whether the assessment of the plaintiff's remuneration claimed required strict proof and verification of each item claimed.

Held (dismissing encl. 14):

(1) The plaintiff had provided extensive contemporaneous documentation through his 209-page statement of work, which meticulously detailed the work performed by each team member. This level of detail allowed the court to assess the reasonableness of both the work performed and time expended without requiring oral testimony. The defendant had not identified any specific entries in this statement that it claimed were fraudulent or fabricated, merely asserting that the work and time claimed appear unreasonable. The defendant had only made general assertions about the need for verification without identifying specific disputed facts that could not be resolved through extensive documentary evidence already before the court. The detailed documentary evidence was sufficient to assess the work performed by the plaintiff's team without requiring oral testimony. Witness testimony was not required to verify the work performed by the plaintiff's team. (paras 17-22)

(2) The work performed by team members was comprehensively documented with detailed breakdowns of personnel, dates, tasks, and time expended, all conducted under the plaintiff's direct supervision and authority as a court-appointed officer during the ten-month tenure. The remuneration claim here was supported by extensive contemporary records prepared in the ordinary course of the judicial management, eliminating the need for third-party testimony to establish the nature and extent of work performed. The documentary evidence before the court included a comprehensive breakdown of

work performed, with the identity of personnel, dates, tasks, and time expended clearly specified. The defendant had not identified any specific aspects of this documentation that required clarification through oral testimony beyond what could be achieved through cross-examination of the plaintiff under O. 38 r. 2. The existing provisions for cross-examination under O. 38 r. 2 provide sufficient means to test the evidence before the court. The defendant's desire to examine team members did not justify the delay and expense of converting these proceedings to a writ action, particularly given the detailed documentary record already available. (paras 30-33)

(3) The plaintiff had provided clear evidence supporting the reasonableness of the RM800 composite rate. His explanation that this represented a discounted average of team rates, including his own significantly higher rate, demonstrated a cost-effective approach that benefited the company. The use of a composite rate, rather than individual rates for each team member, promotes efficiency and cost-effectiveness. The comprehensive documentation before the court, including the detailed statement of work and explanations of how the composite rate was calculated, provided sufficient basis for assessing the reasonableness of the rate without requiring trial. This assessment fell squarely within the court's expertise in determining fair remuneration. This approach was consistent with the objectives of efficient court process and cost-effective resolution of remuneration applications. Converting these proceedings to a writ action solely to examine the composite rate would impose unnecessary costs and delay without providing any material benefit to the determination of fair remuneration. The issue of the composite rate's reasonableness could be adequately determined by the documentary evidence before the court, and it did not justify conversion to a writ action. (paras 37-43)

(4) While the defendant claimed that numerous overlapping entries existed, the defendant had not identified specific instances from the 209-page statement that demonstrated material factual disputes. The plaintiff had provided cogent explanations for the challenged entries. For instance, regarding bank-related tasks, the plaintiff explained that all authorised signatories were required to be present at the bank for verification purposes, and additional time was needed to explain the novel judicial management process to bank officials. These explanations could be assessed based on the documentary evidence without requiring oral testimony. Thus, the alleged overlapping entries and questions of reasonableness could be properly evaluated through the detailed documentary record before the court. Converting these proceedings to a writ action would impose unnecessary costs and delay without materially assisting in the determination of fair remuneration. (paras 47-52)

(5) The possibility of a counterclaim did not justify converting these proceedings. The present application concerned the plaintiff's remuneration, for which comprehensive documentary evidence existed in the form of a 209-page statement of work and supporting documentation. The remuneration claim could be determined based on the documented work performed during the plaintiff's tenure. The possibility of future challenges to the appointment or conduct did not affect the court's ability to assess the remuneration claim on its merits through the originating summons procedure. The remuneration application could proceed on its own merits through the originating summons procedure, leaving any separate challenges to be pursued through appropriate independent proceedings. (paras 55-58)

(6) Under s. 414(2) of the Companies Act, a judicial manager has the duty to 'do all such things as may be necessary for the management of the affairs, business and property of the company.' This necessarily includes taking control of the company's operations from its directors. The plaintiff's exclusion of management from operational decisions during his tenure was therefore not only proper but required by law. The evidence before the court demonstrated that the defendant had access to all relevant information. During the plaintiff's tenure, the defendant had actively engaged with him, demonstrating that the management had sufficient access to information to make informed decisions about the company's affairs. The defendant's alleged need for discovery did not justify conversion to writ proceedings. The documentary evidence already available, combined with the defendant's demonstrated ability to access and analyse company records, provided a sufficient basis for determining the plaintiff's remuneration claim through the existing originating summons procedure. (paras 61-67)

(7) The plaintiff had provided detailed documentation of both pre-appointment and post-termination work in his 209-page statement of work. The pre-appointment work primarily involved preparing to take control of the company's operations, while the post-termination work largely consisted of complying with court directions regarding his remuneration application. These activities were clearly connected to his role as interim judicial manager and could be assessed based on the documentary evidence before the court. The nature and extent of both pre-appointment and post-termination work were clearly detailed in the statement of work, allowing for scrutiny without the need for oral evidence. The inclusion of pre-appointment and post-termination work in the remuneration claim did not justify conversion to writ proceedings. These aspects of the claim could be properly assessed through the documentary evidence before the court in the originating summons procedure. (paras 71-75)

(8a) The comprehensive documentation before the court belied the defendant's assertion that contemporaneous records were lacking. The plaintiff had produced a meticulously detailed 209-page statement of work, supported by his report dated 2 September 2024, which included appendices documenting court orders, correspondences, and other contemporaneous records generated during his tenure. This level of detail allowed for proper scrutiny of the work performed and time expended without requiring oral testimony. The defendant was also able to produce a detailed analysis of fund transfers made during the plaintiff's tenure, demonstrating their access to and ability to analyse contemporaneous records. The level of detail provided in the plaintiff's documentation exceeded what would typically be required for remuneration claims. Each entry in the statement of work identified the specific personnel involved, the nature of the task, its purpose, and the time expended. This allowed for proper assessment of the reasonableness of both the work performed and time claimed without requiring oral testimony. (paras 78-82)

(8b) Moreover, the Companies Act does not expressly require an interim judicial manager to support a remuneration application with any particular form of documentation. Section 407(4) of the Act, which governs judicial managers' remuneration, is notably silent on documentary requirements. This deliberate omission is significant. Parliament would have been well aware of the need to verify judicial managers' work when enacting the corporate rescue provisions of the Companies Act. Yet it chose not to prescribe specific documentary requirements, instead leaving the assessment of remuneration claims to the court's discretion under s. 407(4)(c). The court must respect this legislative choice and not impose additional documentary requirements beyond what Parliament has prescribed. To require specific forms of documentation or mandate trial procedure would be to read into the statute requirements that Parliament deliberately chose not to include. The documentation before this court was sufficient to assess the plaintiff's remuneration claim through the originating summons procedure. The defendant's argument about the lack of contemporaneous documentation did not justify conversion to writ proceedings. (paras 87-89)

(9) Documentary evidence revealed that the plaintiff had taken specific steps to improve the company's financial position. The plaintiff's intervention from March 2022 onwards led to improved performance, as evidenced by the secured sales orders for subsequent months. This progression was clearly documented and did not require oral testimony to establish. The financial performance of the company during the relevant period was comprehensively documented through

financial statements, banking records and sales orders. Significantly, the defendant's own engagement with the plaintiff during his tenure undermined their current position and assertion that his tenure was characterised by poor financial performance requiring examination through trial. The company's financial performance during the plaintiff's tenure could be adequately assessed through the documentary evidence before the court. (paras 93-97)

(10) The plaintiff's interactions with third parties could be adequately assessed through the documentary evidence before the court, including his role in the scheme of arrangement negotiations. There were contemporaneous correspondences, including certain letters, specifically requesting the plaintiff's assistance with creditor negotiations, demonstrated both the nature and extent of his involvement. The documentation allowed for proper assessment of his contribution without requiring oral testimony. Furthermore, the improvement in creditor returns occurred during the plaintiff's tenure and was documented in contemporaneous records. This objective outcome provided a clear basis for assessing the value of his contribution without requiring oral testimony from third parties. The plaintiff's interactions with third parties could be adequately assessed through the documentary evidence before the court. (paras 99-108)

(11) The defendant had not demonstrated why the detailed documentation provided by the plaintiff was insufficient for assessment. Their objections primarily concerned the reasonableness of time spent and rates charged – matters which could be determined through the existing evidence without requiring a trial. Thus, the assessment of the plaintiff's remuneration claim could be conducted properly within originating summons proceedings, without the need for conversion to a writ action merely to facilitate a taxation-like process. (paras 116-117)

Case(s) referred to:

Emiprima Sdn Bhd v. Wonderful Castle Sdn Bhd [2023] CLJU 1438; [2023] 1 LNS 1438 CA ***(refd)***

Goh Swee Oh & Ors v. Heng Ji Keng & Anor [2011] 6 CLJ 812 HC ***(refd)***

ISM Sdn Bhd v. Queensway Nominees (Tempatan) Sdn Bhd & Ors [2016] 2 CLJ 294 HC ***(refd)***

Jack-In Pile (M) Sdn Bhd v. Bauer (Malaysia) Sdn Bhd & Another Appeal [2020] 1 CLJ 299 FC ***(refd)***

Mohamed Zahid Yon Mohamed Fuad v. Yakub Hussaini & Anor [2019] CLJU 1669; [2019] 1 LNS 1669 HC ***(refd)***

Maple Amalgamated Sdn Bhd & Anor v. Bank Pertanian Malaysia Bhd [2021] 8 CLJ 409 FC ***(refd)***

Ong Kwong Yew & Ors v. Ong Ching Chee & Ors And Other Appeals [2018] CLJU 2247; [2018] 1 LNS 2247 CA ***(refd)***

Punithavathi Ponniah v. Goh Mary & Ors [2010] CLJU 475; [2010] 1 LNS 475 HC ***(refd)***
Re Econ Corp Ltd [2004] 2 SLR(R) 264 ***(refd)***
The Summit Subang USJ Management Corporation v. Ho Phoy Kwang & Anor [2023] CLJU 2649; [2023] 1 LNS 2649 HC ***(refd)***
WTWT Sdn Bhd v. Chew Meu Jong & Ors And Another Case [2018] CLJU 1458; [2018] 1 LNS 1458 HC ***(refd)***

Legislation referred to:
Companies Act 1965 (repealed), s. 181
Companies Act 2016, ss. 346, 407(4)(c), 414(2)
Construction Industry Payment and Adjudication Act 2012, s. 35
National Land Code, s. 214A
Rules of Court 2012, O. 28 r. 8, O. 38 r. 2(3)

For the plaintiff - Saritha Devi & Nabila Roslee; M/s Firoz Julian
For the defendant - Tharminder Singh, Joycelyn Goh & Aiman Danial; Ms Izral Partnership

Reported by Suhainah Wahiduddin

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

[1] Before the court is an application to convert an originating summons seeking remuneration of a former interim judicial manager to a writ action. The former interim judicial manager claims remuneration of approximately RM2 million for work done over a ten-month period while managing the defendant company, based on a composite hourly rate of RM800 for himself and his team members. The defendant opposes the remuneration claim and seeks conversion to a writ action on the grounds that there are substantial factual disputes requiring trial, particularly regarding the reasonableness of the time spent and work done, while also seeking to pursue a counterclaim challenging the validity of the interim judicial manager's appointment.

Background Facts

[2] The plaintiff, Dato' Adam Primus Varghese bin Abdullah, was appointed as the interim judicial manager of the defendant, Khee San Food Industries Sdn Bhd, by way of an *ex parte* order dated 17 November 2021 in Kuala Lumpur High Court Originating Summons No. WA-28JM-21-11-2021 ("JM Suit"). The JM Suit was commenced by Maybank Islamic Berhad ("Maybank"), which held 3.34% of the defendant's total debt.

[3] The defendant is a wholly owned subsidiary of Khee San Berhad ("KSB"), a publicly listed company. The defendant is involved in manufacturing candy confectionery and wafer products. Its registered address is at No. 5-9A, The Boulevard Offices, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur, while its business address is at Lot 1819-1824 and 1832, Jalan Kolej, Seri Kembangan, 43300 Selangor.

A **[4]** The plaintiff served as interim judicial manager from 17 November 2021 to 1 September 2022. During this period, he was assisted by five personnel from his firm: Dato Nabhesh Khanna (Director), Macpherson Simon and Iswari Manokharan (Associate Directors), and Natasha Sophia and Jo Gan Pee Hui (Consultants).

B **[5]** On 4 March 2022, the plaintiff filed an application in the JM Suit for his remuneration ("first remuneration application") covering work carried out from 17 November 2021 to 4 March 2022, totalling 1,336.5 hours at a composite rate of RM800 per hour.

C **[6]** On 1 September 2022, Maybank withdrew the JM Suit following a settlement between the financial institution's creditors and KSB. This effectively terminated the plaintiff's position. On the same date, the High Court allowed RM2 million of the defendant's funds to be held by the plaintiff's then-solicitors, Messrs Zaid Ibrahim & Co ("ZICO"), pending determination of the first remuneration application. The court also ordered
D the defendant to set aside RM55,505 in a separate account.

[7] On 20 March 2023, the High Court dismissed the first remuneration application as premature, finding that the plaintiff had not complied with the prerequisites under s. 407(4) of the Companies Act 2016 as the plaintiff filed
E his first remuneration application without first attempting to obtain the defendant's or the creditors' approval for his proposed fees. The plaintiff appealed to the Court of Appeal, which dismissed the appeal on 9 January 2024. A subsequent application for leave to appeal to the Federal Court was refused on 24 July 2024.

F **[8]** Following these developments, on 29 July 2024, the plaintiff issued letters to the defendant's creditors proposing fees of RM1,999,435.60 (including SST) for 2,357.87 hours of work carried out between 17 November 2021 and 1 September 2022, as well as ancillary work up to 29 July 2024, at the composite rate of RM800 per hour. The letters were
G issued to 144 creditors of the defendant.

[9] On 20 September 2024, the plaintiff filed the present Originating Summons No. WA-24NCC-455-09-2024 seeking approval of his remuneration ("second remuneration application"). In support, he submitted a 209-page detailed statement of work and a report dated 2 September 2024.

H **[10]** On 18 October 2024, the defendant filed encl. 14, an application to convert the second remuneration application from an originating summons to a writ action. This application was supported by an affidavit affirmed by Edward Tan Juan Peng, a director of the defendant. The plaintiff filed an affidavit in reply on 19 November 2024, and the defendant filed a further
I affidavit in reply on 29 November 2024. Written submissions were exchanged between December 2024 and January 2025, and oral arguments were heard regarding the conversion application.

The Application In Enclosure 14

[11] Enclosure 14 is the defendant's notice of application dated 18 October 2024 seeking to convert the current originating summons proceedings into a writ action pursuant to O. 28 r. 8 of the Rules of Court 2012. The primary relief sought is for the court to order that the proceedings continue as if the matter had been begun by writ, which would fundamentally change the procedural framework from the current originating summons format to a full trial action. This conversion would enable the defendant to pursue their counterclaim against the plaintiff concerning both the validity of his appointment as interim judicial manager and allegations of misconduct, wrongful acts, and breach of fiduciary duties during his tenure, while simultaneously defending against his remuneration claim of approximately RM2 million.

[12] The defendant's justification for the conversion is premised on two main grounds: first, that there are substantial factual disputes and allegations which must be resolved with the benefit of *viva voce* evidence (oral testimony) rather than affidavit evidence alone, and second, that witness testimony and evidence from third parties is necessary to fairly decide both the plaintiff's remuneration claim and the defendant's counterclaim. The defendant argues that the various allegations regarding the reasonableness of time spent, work done, verification of team members' contributions, and the composite hourly rate of RM800 require live witness examination that cannot be adequately addressed through the originating summons procedure. They contend that the current format is manifestly unsuitable for resolving these complex factual disputes, particularly given their challenges to the plaintiff's appointment validity and their allegations of his various misconducts during his management of the company.

Respective Parties' Submissions

[13] The plaintiff opposes conversion on the basis that there are no substantial disputes of fact warranting a trial. He contends that he has provided comprehensive documentation in the form of a 209-page detailed statement of work setting out dates, personnel involved, tasks performed and time expended, and that the defendant's objections to the reasonableness of time spent and work performed can be adequately determined through affidavit evidence without requiring oral testimony. The plaintiff further argues that the defendant is estopped from challenging his appointment as interim judicial manager after having accepted and worked with him in that capacity for ten months.

[14] The defendant seeks conversion, arguing that significant factual disputes require oral evidence and cross-examination, particularly since over 90% of the claimed work was performed by the plaintiff's team members rather than the plaintiff himself. The defendant contends that strict proof is

required regarding work done by firm employees, that the composite rate of RM800 per hour needs to be justified through evidence, and that discovery is needed since management was excluded from information during the interim judicial management period. The defendant also wishes to pursue a counterclaim challenging the validity of the plaintiff's *ex parte* appointment and potentially involving third parties.

Analysis And Findings Of The Court

Alleged Requirement For Witness Testimony To Verify Work Performed By The Former Interim Judicial Manager's Team

[15] The defendant argues that substantial factual disputes exist regarding the verification of work allegedly performed by the plaintiff's team members, who have not filed any affidavits in these proceedings. The defendant emphasises that approximately 93% of the claimed work was performed by team members rather than the plaintiff himself, and contends that their testimony is essential to verify the work performed and time expended.

[16] The plaintiff contends that witness testimony is unnecessary to verify the work performed by his team members during his tenure as interim judicial manager. He has produced a comprehensive 209-page detailed statement of work which sets out the exact dates, identity of personnel, purpose and description of each task, and time expended by each team member. The plaintiff argues that this detailed documentation, coupled with his supporting affidavit evidence, is sufficient for the court to assess the reasonableness of the work performed and remuneration claimed.

[17] Upon careful consideration of the parties' submissions and evidence, I am satisfied that witness testimony is not required to verify the work performed by the plaintiff's team. The High Court in *WTWT Sdn Bhd v. Chew Meu Jong & Ors And Another Case* [2018] CLJU 1458; [2018] 1 LNS 1458 involved conversion applications filed by minority shareholders in oppression suits under s. 346 of the Companies Act 2016. The plaintiffs argued that serious disputes of facts arising from the exchange of affidavits necessitated conversion to allow parties to give oral evidence and be cross-examined. However, the court found that the advantage it had come "in the form of ample contemporaneous undisputed documents such as the e-mails, minutes of meetings and the Constitution in support of and relevant to all the averments and issues raised." The court held that "there will always be disputes as to position in the exchange of affidavits by parties in dispute. Nevertheless, that does not automatically translate to the need for a *viva voce* evidence or a full-blown trial" and emphasised that "when contemporaneous documents are available, it would be more reliable to refer to the contemporaneous documents than to believe a party's version as stated in the affidavit."

[18] The plaintiff has provided extensive contemporaneous documentation through his 209-page statement of work, which meticulously details the work performed by each team member. This level of detail allows the court to assess the reasonableness of both the work performed and time expended without requiring oral testimony. The defendant has not identified any specific entries in this statement that it claims are fraudulent or fabricated, merely asserting that the work and time claimed appear unreasonable.

[19] The Court of Appeal in *The Summit Subang USJ Management Corporation v. Ho Phoy Kwang & Anor* [2023] CLJU 2649; [2023] 1 LNS 2649; [2024] 1 MLJ 912 dealt with a case where the appellant management corporation of a business complex with 556 commercial parcels sought to convert an originating summons to a writ action in a dispute over whether it could impose different maintenance fee rates for different parcels. The Court of Appeal emphasised that "In an application to convert the originating summons to a writ action, the principle is that he who asserts must prove and here, the appellant carries a legal burden to show circumstances and documentary evidence to justify the grant of a conversion and all the reasons must be deposed in the affidavit filed in support of the application." The defendant has failed to discharge this burden, making only general assertions about the need for verification without identifying specific disputed facts that cannot be resolved through the extensive documentary evidence already before the court.

[20] While the defendant relies on *Re Econ Corp Ltd* [2004] 2 SLR(R) 264 to argue that evidence should be adduced regarding whether compensation for team members has been reasonably incurred and that "overmanning will not be sanctioned," this case actually supports the plaintiff's position. In *Re Econ Corp*, the Singapore High Court was faced with provisional liquidators who had filed inadequate affidavits lacking particularisation, where the applicants "failed to discharge their burden of proving that the remuneration sought was justifiable" due to clearly inadequate documentation. The court held at: "The correct procedure in the circumstances was for the applicants to file an affidavit with further and better particulars furnishing adequate information and relevant supporting documents." Significantly, the court ordered the filing of further affidavit evidence rather than converting the matter to a trial. This demonstrates that documentary evidence, not oral testimony, is the appropriate means of proving remuneration claims by insolvency practitioners.

[21] I also note that the practice of insolvency practitioners working with a team is standard in the industry, as acknowledged in *Re Econ Corp Ltd.* The court held that "The remuneration that an insolvency practitioner can command embraces compensation for the assistance of employees of their firms" and that while "evidence should be adduced that this compensation has been reasonably incurred," it is recognised that relying on firm support "might often make sense." The defendant's suggestion that each team

member must personally testify about their work would impose an unprecedented and impractical burden on insolvency practitioners. Such a requirement would significantly increase costs and delay the resolution of remuneration applications, contrary to the objectives of an efficient court process.

[22] For these reasons, I find that the detailed documentary evidence before the court is sufficient to assess the work performed by the plaintiff's team without requiring oral testimony. The defendant's arguments on this point do not justify converting these proceedings to a writ action.

Sufficiency Of Cross-examination Under O. 38 r. 2 Necessity For Full Trial

[23] The defendant contends that cross-examination under O. 38 r. 2 would be insufficient as it would be limited to deponents of affidavits. The defendant argues that conversion to writ action is necessary to enable examination of the plaintiff's team members and to allow the court to draw adverse inferences from their absence at trial.

[24] The plaintiff submits that any factual disputes can be adequately resolved through cross-examination of deponents under O. 38 r. 2 of the Rules of Court 2012, which provides that "the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the court." The plaintiff argues that given the comprehensive documentation already before the court, including the 209-page detailed statement of work and supporting affidavits, there is no need for a full trial to examine team members who conducted work under his supervision as interim judicial manager.

[25] The High Court in *Mohamed Zahid Yon Mohamed Fuad v. Yakub Hussaini & Anor* [2019] CLJU 1669; [2019] 1 LNS 1669; [2019] MLJU 1286, per Darryl Goon Siew Chye J (as he then was), considered a second defendant's application to convert an originating summons brought under s. 346 of the Companies Act 2016 for oppression remedies into a writ action. The second defendant argued there were several disputed issues of fact and contended it would be more appropriate for the plaintiff to be cross-examined. Justice Darryl Goon directly addressed this issue, holding that:

> In a modern-day trial where witness statements are used, there is practically no difference between the cross-examination of a witness on his witness statement in a writ action and the cross-examination of a deponent on his affidavit in proceedings commenced by way of an originating summons. If indeed the originating summons were to be continued as if it was commenced by way of a writ, all witnesses would have to tender oral evidence when what may be required is merely the

> cross-examination of only certain deponents on their affidavits. This, again, would not contribute to an expeditious and economical disposal of the action.

[26] His Lordship further observed that converting the proceedings would "invariably incur further time and costs" through the need for pleadings, witness statements and bundles of documentary evidence, which would not be "compatible with the objective of achieving an expeditious and economical disposal of the action."

[27] The principles governing remuneration of insolvency practitioners, as established by the Court of Appeal in *Emiprima Sdn Bhd v. Wonderful Castle Sdn Bhd* [2023] CLJU 1438; [2023] 1 LNS 1438; [2023] 5 MLJ 695, require that the work claimed must be undertaken in the course of administration and that the amount claimed should be fair and reasonable. In that case, the liquidator claimed RM9,296,304 based solely on percentage rates in the Table C of the Companies (Winding-Up) Rules 1972 without providing detailed justification for work done. The Court of Appeal held:

> To determine a fair and reasonable remuneration, the court must ensure that the work upon which a claim is made must be the work undertaken or done in the course of the administration of the wound up company. In the determination process, the court has to consider all relevant factors involved, and need not accept what is submitted at face value but is duty bound to scrutinise all facts placed before it. Along the process, the burden to prove a fair and reasonable amount of remuneration lies on a liquidator.

[28] These requirements can be satisfied through documentary evidence and cross-examination of the plaintiff on his affidavits, without necessitating testimony from every team member.

[29] The defendant's reliance on *ISM Sdn Bhd v. Queensway Nominees (Tempatan) Sdn Bhd & Ors* [2016] 2 CLJ 294 is misplaced. In *ISM*, the defendants sought to convert an originating summons alleging minority oppression under s. 181 of the Companies Act 1965 into a writ action. The case involved complex verbal joint venture arrangements regarding multimillion-ringgit investments in Imbi lands in Kuala Lumpur, with no formal written agreements and various conflicting facts concerning shareholding, loan arrangements, and rights issues. The High Court granted conversion, holding that: "Apart from that, this court is of the view there is a great possibility that third parties would have to be called in to determine the issue on minority oppression. These third parties cannot be compelled to affirm an affidavit if this matter is allowed to proceed only on affidavits evidence. However, they have no options if this case proceeds as a writ action in open court for witnesses to testify as they are always open to be subpoenaed." The court emphasised that conversion was necessary because

A the case involved "largely oral evidence as opposed to documentary evidence" and that witnesses from third parties like Maybank needed to testify.

[30] In the present case, the work performed by team members is comprehensively documented with detailed breakdowns of personnel, dates,
B tasks, and time expended, all conducted under the plaintiff's direct supervision and authority as a court-appointed officer during the ten-month tenure. Unlike *ISM*'s reliance on oral agreements with missing documentation, the remuneration claim here is supported by extensive contemporary records prepared in the ordinary course of the judicial
C management, eliminating the need for third-party testimony to establish the nature and extent of work performed.

[31] The documentary evidence before the court includes a comprehensive breakdown of work performed, with the identity of personnel, dates, tasks, and time expended clearly specified. The defendant has not identified any
D specific aspects of this documentation that require clarification through oral testimony beyond what could be achieved through cross-examination of the plaintiff under O. 38 r. 2.

[32] Additionally, converting these proceedings to a writ action would, as
E noted in *Mohamed Zahid Yon*, "invariably incur further time and costs" through the need for pleadings, witness statements, and bundles of documentary evidence. Such procedural complexity would not be "compatible with the objective of achieving an expeditious and economical disposal of the action."

F **[33]** In these circumstances, I find that the existing provisions for cross-examination under O. 38 r. 2 provide sufficient means to test the evidence before the court. The defendant's desire to examine team members does not justify the delay and expense of converting these proceedings to a writ action, particularly given the detailed documentary record already available.

G *Reasonableness Of The Composite Hourly Rate Of RM800*

[34] The defendant argues that the RM800 per hour composite rate is unreasonable and requires scrutiny through trial, as this rate was never suggested or agreed upon at the time of appointment and is being applied uniformly across team members with vastly different experience levels. The
H defendant contends that this issue cannot be resolved through documentary evidence alone.

[35] The plaintiff contends that the composite rate of RM800 per hour represents a significant discount from his usual rate of over RM3,000 per hour, given his 30 years of experience and professional standing. He explains
I that this composite rate was calculated by averaging the individual rates of team members and applying a 25% discount, resulting in a fair and cost-

effective rate for all work performed. The plaintiff has also produced a 2017 High Court order fixing his liquidator's rate at RM800 per hour, demonstrating the reasonableness of the rate claimed.

[36] The question of whether the composite rate requires examination through trial can be resolved by reference to established principles governing remuneration of insolvency practitioners. The Court of Appeal in *Emiprima Sdn Bhd*, adopting the principles from *Re Econ Corp Ltd*, held: "the rates, in the absence of acceptable guidelines it cannot be accepted at face value and the rates to be determined as fair and reasonable by the court depends on complexity or otherwise of the case." The court further emphasised that "the court has to consider all relevant factors involved, and need not accept what is submitted at face value but is duty bound to scrutinise all facts placed before it."

[37] The plaintiff has provided clear evidence supporting the reasonableness of the RM800 composite rate. His explanation that this represents a discounted average of team rates, including his own significantly higher rate, demonstrates a cost-effective approach that benefits the company. The existence of a previous High Court order from 2017 fixing the same rate provides an objective benchmark for the reasonableness of the rate claimed.

[38] The use of a composite rate, rather than individual rates for each team member, promotes efficiency and cost-effectiveness. As noted, in *Re Econ Corp Ltd*, insolvency practitioners commonly work with firm members of varying experience levels, with the court recognising that "Accountancy firms seem to have a number of names for different members of their staff performing different functions" and that "There should be horses for particular courses." The composite rate approach prevents the complexity and increased costs that would result from applying different rates to each task performed by different team members.

[39] The defendant's argument that the rate was not agreed upon at the appointment misses the mark. Section 407(4) of the Companies Act 2016 provides:

> A judicial manager shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined:
>
> (a) by agreement between the judicial manager and the company or creditors, as the case may be;
>
> (b) failing such agreement, by a resolution passed at a meeting of creditors by a majority of not less than seventy-five per centum in value and of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the judicial manager by a notice to

A each creditor to which notice shall be attached a statement of all receipts and expenditure by the judicial manager and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

B **[40]** This specifically contemplates that where agreement on remuneration cannot be reached with the company or creditors, the court shall determine fair remuneration. The absence of prior agreement on rates does not necessitate a trial; rather, it is precisely the type of issue the court is equipped to determine based on documentary evidence and submissions.

C **[41]** The comprehensive documentation before the court, including the detailed statement of work and explanations of how the composite rate was calculated, provides a sufficient basis for assessing the reasonableness of the rate without requiring a trial. This assessment falls squarely within the court's expertise in determining fair remuneration for insolvency D practitioners, as recognised in *Emiprima Sdn Bhd*.

[42] This approach is consistent with the objectives of an efficient court process and cost-effective resolution of remuneration applications. Converting these proceedings to a writ action solely to examine the composite rate would impose unnecessary costs and delay without providing E any material benefit to the determination of fair remuneration.

[43] For these reasons, I find that the issue of the composite rate's reasonableness can be adequately determined on the documentary evidence before the court, and does not justify conversion to a writ action.

F *Alleged Self-serving And Overlapping Entries In The Statement Of Work*

[44] The defendant argues that numerous entries in the plaintiff's statement of work appear self-serving, illogical and contain overlapping tasks. The defendant particularly challenges entries such as multiple team members attending bank meetings, time spent on email correspondence, and allegedly G duplicative management tasks, asserting that these require thorough examination through oral evidence.

[45] The plaintiff submits that his 209-page statement of work provides comprehensive and verifiable details of all work performed, including specific dates, personnel involved, purpose of tasks, and time expended. The H plaintiff contends that any apparent overlapping tasks reflect the necessarily repetitive nature of managing a candy manufacturing business, including weekly management meetings and ongoing operational oversight.

[46] In assessing whether these allegations warrant conversion to writ I action, I note that the High Court in *WTWT Sdn Bhd* held that denials of allegations in affidavits do not automatically necessitate oral evidence. The

court must consider whether the disputes raised are substantial and material, rather than mere disagreements about the interpretation of documented events.

[47] The defendant's objections, as detailed in para. 24 of their affidavit, are notably unparticularised. While claiming numerous overlapping entries exist, the defendant has not identified specific instances from the 209-page statement that demonstrate material factual disputes. The examples provided, such as multiple team members attending bank meetings or time spent on email correspondence, raise questions of reasonableness rather than factual disputes requiring oral evidence.

[48] The plaintiff has provided cogent explanations for the challenged entries. For instance, regarding bank-related tasks, the plaintiff explains that all authorised signatories were required to be present at the bank for verification purposes, and additional time was needed to explain the novel judicial management process to bank officials. These explanations can be assessed based on the documentary evidence without requiring oral testimony.

[49] The Court of Appeal in *The Summit Subang USJ Management Corp* emphasised that the burden lies on the party seeking conversion to show circumstances and documentary evidence justifying such conversion. The defendant's generalised complaints about overlapping tasks fall short of this threshold, particularly given the detailed documentation already before the court.

[50] Furthermore, the High Court in *Mohamed Zahid Yon* recognised that converting proceedings unnecessarily would "invariably incur further time and costs." The court can adequately assess the reasonableness of time entries and alleged overlaps through the existing documentation and, if necessary, cross-examination under O. 38 r. 2.

[51] The defendant's reliance on *Re Econ Corp Ltd* is misplaced. While that case emphasises the need for careful scrutiny of remuneration claims, it does not mandate oral evidence. Indeed, when faced with insufficient documentation, the Singapore High Court ordered further affidavit evidence rather than converting the matter to trial.

[52] I am satisfied that the alleged overlapping entries and questions of reasonableness can be properly evaluated through the detailed documentary record before the court. Converting these proceedings to a writ action would impose unnecessary costs and delay without materially assisting in the determination of fair remuneration. The defendant's arguments on this point are therefore rejected.

Proposed Counterclaim As A Basis For Conversion

[53] The defendant asserts that it intends to pursue a counterclaim challenging both the validity of the plaintiff's appointment and alleged breaches of fiduciary duty. The defendant argues that these issues require full ventilation through trial, particularly as the *inter partes* hearing on the appointment was never concluded due to the withdrawal of the main application.

[54] The plaintiff contends that the mere possibility of a counterclaim does not justify conversion of these proceedings to a writ action. The plaintiff argues that his remuneration application can be determined based on the extensive documentary evidence already before the court, and any separate challenges to his appointment or conduct should be pursued through appropriate separate proceedings.

[55] I find that the possibility of a counterclaim does not justify converting these proceedings. The present application concerns the plaintiff's remuneration, for which comprehensive documentary evidence exists in the form of a 209-page statement of work and supporting documentation. The Court of Appeal in *The Summit Subang USJ Management Corp* emphasised that the burden lies on the party seeking conversion to show circumstances and documentary evidence justifying such conversion.

[56] The defendant's reliance on *ISM Sdn Bhd* is misplaced. While that case involved conversion due to the need for third-party evidence, here the remuneration claim can be determined based on the documented work performed during the plaintiff's tenure. The possibility of future challenges to the appointment or conduct does not affect the court's ability to assess the remuneration claim on its merits through the originating summons procedure.

[57] The High Court in *WTWT Sdn Bhd* established that conversion is only warranted where there are substantial factual disputes that cannot be resolved through documentary evidence. The proposed counterclaim, which raises distinct legal and factual issues from the remuneration application, can be pursued separately if the defendant so chooses, following appropriate procedures.

[58] For these reasons, I find that the possibility of a counterclaim does not justify converting these proceedings to a writ action. The remuneration application can proceed on its merits through the originating summons procedure, leaving any separate challenges to be pursued through appropriate independent proceedings.

Alleged Necessity For Discovery Due To Exclusion From Documents And Information

[59] The defendant claims that key management was excluded from documents and information during the plaintiff's tenure, making discovery

necessary to uncover various issues and facts that remain unknown. The defendant argues that this exclusion prevents them from properly challenging the plaintiff's remuneration claims without a full discovery process through writ proceedings.

[60] The plaintiff contends that as interim judicial manager, he had the statutory authority to manage the company's affairs, and the directors were properly stripped of their powers during his tenure. He argues that all relevant documents and information were left at the company's premises and remain accessible through online banking records, making discovery unnecessary. The plaintiff points to the defendant's own detailed analysis of fund transfers in Edward Tan Juan Peng's affidavit dated 28 April 2023 as evidence that the defendant has access to all relevant information.

[61] The defendant's argument fundamentally misunderstands the nature of judicial management. Under s. 414(2) of the Companies Act 2016, a judicial manager has the duty to "do all such things as may be necessary for the management of the affairs, business and property of the company." This necessarily includes taking control of the company's operations from its directors. The plaintiff's exclusion of management from operational decisions during his tenure was therefore not only proper but required by law.

[62] The evidence before the court demonstrates that the defendant has access to all relevant information. As revealed in the oral hearing transcript, the defendant was able to produce a detailed table in Edward Tan Juan Peng's affidavit dated 28 April 2023 setting out specific details of fund transfers made during the plaintiff's tenure, including amounts and purposes. This level of detail belies the defendant's claim that they lack access to necessary information.

[63] Furthermore, the plaintiff has provided extensive documentation through his 209-page statement of work and supporting affidavits. The High Court in *WTWT Sdn Bhd* held that the mere existence of disputed interpretations of documented events does not necessitate conversion to writ proceedings where the underlying documentation is available to both parties.

[64] The Court of Appeal in *The Summit Subang USJ Management Corp* emphasised that the burden lies on the party seeking conversion to show circumstances and documentary evidence justifying such conversion. The defendant has failed to identify any specific documents or information that it requires but cannot access through normal channels. Instead, the evidence suggests that the defendant has sufficient information to make detailed submissions about the plaintiff's conduct during his tenure.

[65] The defendant's claim of exclusion is further undermined by its own conduct. During the plaintiff's tenure, rather than raising concerns about access to information, the defendant actively engaged with him, as evidenced by KSB's letter dated 21 June 2022 which stated:

> Reference is made to our meeting yesterday between our Dato' Mohamad Razali Rahim, Mr Edward Tan and Mr. Yap Chi Keong with your goodself and Dato' Nabhesh Khanna. In advance, we would like to thank you for taking time to discuss the above captioned matter yesterday and as agreed we enclosed a copy of the proposed Explanatory Statement and supporting documents for your review and advice. We would like to reiterate that we are looking forward to working with your good office to see through this scheme to completion.

[66] This demonstrates that the management had sufficient access to information to make informed decisions about the company's affairs.

[67] In these circumstances, I find that the defendant's alleged need for discovery does not justify conversion to writ proceedings. The documentary evidence already available, combined with the defendant's demonstrated ability to access and analyse company records, provides a sufficient basis for determining the plaintiff's remuneration claim through the existing originating summons procedure.

Pre-appointment And Post-termination Work In The Remuneration Claim

[68] The defendant emphasises that the plaintiff's claim includes charges for pre-appointment and post termination work, arguing that this requires detailed examination through trial to determine whether such claims are justified and to prevent overcharging. The defendant characterises these claims as an attempt to improperly expand the scope of remuneration beyond the period of appointment.

[69] The plaintiff submits that his claim for pre-appointment and post-termination work is legitimate and properly documented in his statement of work. He contends that the pre-appointment work was essential for assuming control of the company, while the post-termination work was necessary to comply with court directions, including the requirement to satisfy s. 407(4) of the Companies Act 2016 as directed by the High Court's order dated 20 March 2023.

[70] The Court of Appeal in *Emiprima Sdn Bhd* established that the determination of fair and reasonable remuneration for insolvency practitioners requires that "the work upon which a claim is made must be the work undertaken or done in the course of the administration of the wound-up company." While this was stated in the context of liquidation, the principle applies equally to judicial management where work must be undertaken in connection with the proper discharge of duties as an officer of the court, whether performed immediately before or after the formal period of appointment.

[71] The plaintiff has provided detailed documentation of both pre-appointment and post-termination work in his 209-page statement of work. The pre-appointment work primarily involved preparing to take

control of the company's operations, while the post-termination works largely consisted of complying with court directions regarding his remuneration application. These activities are clearly connected to his role as interim judicial manager and can be assessed based on the documentary evidence before the court.

[72] The defendant's argument that a trial is necessary to examine these claims is undermined by their failure to identify any specific entries that they contend are improper or unjustified. As noted in *WTWT Sdn Bhd*, mere disagreement with documented activities does not necessitate oral evidence where the underlying facts are clearly recorded.

[73] Furthermore, the post-termination work was directly necessitated by the court's order dated 20 March 2023 which dismissed the plaintiff's application for remuneration as interim judicial manager covering work carried out from 17 November 2021 to 4 March 2022, totalling 1,336.5 hours at a composite rate of RM800 per hour (being the "first remuneration application" filed as encl. 157 in the JM Suit). This dismissal required the plaintiff to perform additional work to comply with s. 407(4) of the Companies Act 2016 before filing a new remuneration application. It would be inequitable to deny remuneration for work that was directly necessitated by the court's dismissal and the requirement to properly comply with the statutory prerequisites. The detailed documentation of this work allows for proper assessment of its reasonableness without requiring trial.

[74] The defendant's suggestion that a detailed examination through trial is necessary to prevent overcharging fails to recognise that the court can adequately assess the reasonableness of charges through the existing documentation. The nature and extent of both pre-appointment and post-termination work are clearly detailed in the statement of work, allowing for scrutiny without the need for oral evidence.

[75] For these reasons, I find that the inclusion of pre-appointment and post-termination work in the remuneration claim does not justify conversion to writ proceedings. These aspects of the claim can be properly assessed through the documentary evidence already before the court in the originating summons procedure.

Sufficiency Of Documentation To Support Remuneration Claim

[76] The defendant highlights that the plaintiff has attempted to claim remuneration without providing contemporaneous documents to verify the alleged work or time spent. The defendant argues that this lack of contemporaneous documentation necessitates a thorough examination through trial to verify the work claimed and time expended.

[77] The plaintiff contends that he has provided extensive contemporaneous documentation through his 209-page statement of work, which details the exact dates, personnel involved, purpose of tasks, and time expended for all

work performed. He argues that this detailed record, supported by his report dated 2 September 2024 and other documentary evidence, provides a sufficient basis for assessing his remuneration claim without requiring a trial.

[78] The comprehensive documentation before the court belies the defendant's assertion that contemporaneous records are lacking. The plaintiff has produced a meticulously detailed 209-page statement of work, supported by his report dated 2 September 2024, which includes appendices documenting court orders, correspondence, and other contemporaneous records generated during his tenure. This level of detail allows for proper scrutiny of the work performed and time expended without requiring oral testimony.

[79] The Court of Appeal in *Emiprima Sdn Bhd* endorsed the principles established in *Re Econ Corp Ltd* regarding the assessment of insolvency practitioners' remuneration. Significantly, when faced with insufficient documentation in *Re Econ Corp Ltd*, the Singapore High Court ordered further affidavit evidence rather than converting the matter to trial, demonstrating that documentary evidence is the appropriate means of proving remuneration claims.

[80] Furthermore, the defendant's own conduct undermines their argument about the lack of contemporaneous documentation. In their affidavit dated 28 April 2023, the defendant was able to produce a detailed analysis of the fund transfers made during the plaintiff's tenure, demonstrating their access to and ability to analyse contemporaneous records. This suggests that the issue is not a lack of documentation but rather disagreement with the plaintiff's claimed remuneration.

[81] The High Court in *WTWT Sdn Bhd* held that mere disagreement with documented events do not necessitate oral evidence where the underlying facts are clearly recorded. Here, the plaintiff's statement of work provides a clear record of tasks performed, supported by contemporaneous documents such as court orders, correspondence, and banking records.

[82] The level of detail provided in the plaintiff's documentation exceeds what would typically be required for remuneration claims. Each entry in the statement of work identifies the specific personnel involved, the nature of the task, its purpose, and the time expended. This allows for proper assessment of the reasonableness of both the work performed and time claimed without requiring oral testimony.

[83] Moreover, the Companies Act 2016 does not expressly require an interim judicial manager to support a remuneration application with any particular form of documentation. Section 407(4) of the Act, which governs judicial managers' remuneration, is notably silent on documentary requirements. The section merely provides three alternative paths for

determining remuneration: (i) by agreement between the judicial manager and company/creditors, (ii) by resolution passed at a creditors' meeting, or (iii) by the court. Parliament could have, but chose not to, prescribe specific documentary requirements for each of these paths.

[84] This deliberate omission is significant. As established by the Federal Court in *Jack-In Pile (M) Sdn Bhd v. Bauer (Malaysia) Sdn Bhd & Another Appeal* [2020] 1 CLJ 299; [2020] 1 MLJ 174, the fact that Parliament could have inserted specific provisions but chose not to do so is telling of legislative intent. There, the Federal Court was concerned with whether s. 35 of the Construction Industry Payment and Adjudication Act 2012 applied retrospectively to construction contracts executed prior to its commencement. Despite Parliament being aware of existing payment problems in the construction industry (non-payment, late payment or insufficient payment), the Federal Court observed:

> … Parliament was already aware of the problem facing the construction industry. Notwithstanding the same, we find that Parliament in its wisdom elected, and in fact or did not find it necessary to insert a provision that the CIPAA was to be applied retrospectively in order to cover these existing problems in the industry.

[85] The court further stated:

> The fact that Parliament could have inserted similar provisions on the applicability of the CIPAA but has chosen not to do so, does not, in itself lead to the unavoidable interpretation that the CIPAA operates retrospectively … if Parliament has intended the CIPAA to be applied retrospectively, Parliament could have inserted such a provision. Such provision however is conspicuously absent from the CIPAA.

[86] Similarly, in *Maple Amalgamated Sdn Bhd & Anor v. Bank Pertanian Malaysia Bhd* [2021] 8 CLJ 409, concerning whether unconditional sale and purchase agreements under *Bai Bithamin Ajil* financing breached s. 214A of the National Land Code without prior Estate Land Board approval, the Federal Court emphasised: "if Parliament had intended for s. 214A to apply to the transactions in the nature impugned in this case, it would have said so clearly."

[87] Applying these principles here, the absence of documentary requirements in s. 407(4) cannot be dismissed as mere oversight. Parliament would have been well aware of the need to verify judicial managers' work when enacting the corporate rescue provisions of the Companies Act 2016. Yet it chose not to prescribe specific documentary requirements, instead leaving the assessment of remuneration claims to the court's discretion under s. 407(4)(c). The court must respect this legislative choice and not impose additional documentary requirements beyond what Parliament has prescribed. To require specific forms of documentation or mandate trial procedure would be to read into the statute requirements that Parliament deliberately chose not to include.

[88] In any event, the defendant has not specified what additional documents they contend should have been produced or how oral evidence would materially assist in verifying the work performed. In fact, the plaintiff's evidence comprises 17 documents across ten volumes, including a 291-page detailed statement of works setting out precisely what work was done over the ten-month period, who performed it, and the time expended. This is supplemented by an 18-page report dated 2 September 2024 and comprehensive records of litigation matters participated in by the plaintiff.

[89] For these reasons, I find that the documentation before the court is sufficient to assess the plaintiff's remuneration claim through the originating summons procedure. The defendant's argument about the lack of contemporaneous documentation does not justify conversion to writ proceedings.

Alleged Decline In The Company's Financial Performance During Interim Judicial Management

[90] The defendant argues that the company's financial performance declined significantly during the plaintiff's tenure, citing comparative figures showing revenue of RM55,285,541 in FY2021, dropping to RM31,807,566 in FY2022, before recovering to RM55,698,899 in FY2023. The defendant contends that oral evidence is necessary to examine the reasons for this decline and its relation to the remuneration claim.

[91] The plaintiff contends that he successfully stabilised the company's business operations within three months of his appointment, leading to positive cash flow. He points to specific evidence showing that when he took over, the company had a cash position of only RM182,949, which grew to RM4,312,246.64 during his tenure. The plaintiff also highlights secured sales orders of RM4,939,844.32 for August 2022, RM6,187,548.74 for September 2022, and RM7,630,773.10 for October 2022.

[92] The evidence before the court demonstrates that the defendant's argument regarding financial performance is both misconceived and irrelevant to the conversion application. As noted in *Emiprima Sdn Bhd*, the primary consideration in determining remuneration is whether the work was actually performed and whether the claimed remuneration is fair and reasonable. The overall financial performance of the company, while relevant to the broader context, does not require oral evidence to determine the legitimacy of the remuneration claim.

[93] The documentary evidence reveals that the plaintiff took specific steps to improve the company's financial position. He discovered that the company's local sales revenue had been improperly diverted to Khee San Marketing Sdn Bhd since 2020, with it charging for services while utilising the company's warehouse, lorries, and drivers without payment. The plaintiff addressed this issue by March 2022, leading to improved revenue performance thereafter.

[94] Furthermore, as demonstrated in the plaintiff's report dated 2 September 2024, the revenue decline in early 2022 was attributable to the continuation of existing operational arrangements until February 2022. The plaintiff's intervention from March 2022 onwards led to improved performance, as evidenced by the secured sales orders for subsequent months. This progression is clearly documented and does not require oral testimony to establish.

[95] The High Court in *WTWT Sdn Bhd* established that where documentary evidence provides a clear record of events and their progression, oral testimony is unnecessary. Here, the financial performance of the company during the relevant period is comprehensively documented through financial statements, banking records, and sales orders.

[96] Significantly, the defendant's own engagement with the plaintiff during his tenure undermines their current position. KSB's letter dated 21 June 2022 seeking the plaintiff's assistance with creditor negotiations suggests confidence in his management of the company. This contemporaneous evidence contradicts their current assertion that his tenure was characterised by poor financial performance requiring examination through trial.

[97] For these reasons, I find that the company's financial performance during the plaintiff's tenure can be adequately assessed through the documentary evidence before the court. The defendant's argument on this point does not justify converting these proceedings to a writ action.

Examination Of The Interim Judicial Manager's Interactions With Third Parties

[98] The defendant asserts that the plaintiff's interaction with third parties, including his handling of the scheme of arrangement negotiations, requires examination through witness testimony to establish the true extent of his contribution. The defendant argues that only through trial can the court properly assess the value and extent of these interactions.

[99] The plaintiff contends that his interactions with third parties, including his role in the scheme of arrangement negotiations, are fully documented in his statement of work and supporting evidence. He points to specific outcomes, including an increase in proposed returns to financial creditors from RM36 million to RM47 million, demonstrating the value of his contribution without requiring oral testimony.

[100] The documentary evidence before the court provides a comprehensive record of the plaintiff's interactions with third parties during his tenure. The contemporaneous correspondence, including KSB's letter dated 21 June 2022 specifically requesting the plaintiff's assistance with creditor negotiations, demonstrates both the nature and extent of his involvement. This documentation allows for proper assessment of his contribution without requiring oral testimony.

[101] The High Court in *WTWT Sdn Bhd* established that where documentary evidence provides a clear record of events and their outcomes, oral testimony is unnecessary. Here, the concrete improvement in the proposed returns to financial creditors from RM36 million to RM47 million providing an objective measure of the plaintiff's contribution to the negotiations.

[102] The defendant's position is particularly undermined by their own contemporaneous conduct and that of key creditors. Most significantly, Maybank, the original applicant for judicial management, through their solicitors Messrs Shook Lin & Bok's letter dated 23 August 2024, expressly acknowledged their position that the plaintiff, "as the former Interim Judicial Manager of Khee San Food Industries Sdn Bhd ('KSFI'), are entitled to receive such salary or remuneration for work done (which had help to improve the finances and operation of KSFI) during your appointment from the assets of KSFI".

[103] Similarly, Tunai Impian Sdn Bhd, which had initially completely opposed the plaintiff's appointment in the JM Suit and was "previously singing to the tune of the defendant and KSB", subsequently agreed to the plaintiff's proposed fees through their solicitors' consent letter dated 21 August 2024, issued in response to the plaintiff's notice to all creditors dated 29 July 2024. This reversal by Tunai Impian is particularly significant given their prior hostility, as they were among only three creditors out of 144 who agreed to the plaintiff's proposed fees, representing acknowledgment by creditors holding RM18,010,350.76 in claims that the plaintiff's work merited the proposed remuneration.

[104] These contemporaneous admissions by the most significant stakeholders directly contradict the defendant's current position and demonstrate that even those who initially opposed the plaintiff ultimately recognised the value and effectiveness of his work based on documented results.

[105] The Court of Appeal in *The Summit Subang USJ Management Corp* emphasised that the burden lies on the party seeking conversion to show circumstances and documentary evidence justifying such conversion. The defendant has not identified any specific aspects of the plaintiff's third-party interactions that cannot be assessed through the extensive documentation already before the court.

[106] Unlike the situation in *ISM Sdn Bhd*, where conversion was ordered due to the need for evidence from unwilling third parties, the present case involves documented interactions with parties who have already provided their views on the plaintiff's contribution through correspondence and formal responses to his remuneration proposal.

[107] Furthermore, the improvement in creditor returns occurred during the plaintiff's tenure and is documented in contemporaneous records. This objective outcome provides a clear basis for assessing the value of his contribution without requiring oral testimony from third parties. This is consistent with the principles established in *Emiprima Sdn Bhd* regarding the assessment of insolvency practitioners' contributions based on documented outcomes.

[108] For these reasons, I find that the plaintiff's interactions with third parties can be adequately assessed through the documentary evidence before the court. The defendant's argument on this point does not justify converting these proceedings to a writ action.

Taxation And Remuneration Assessment

[109] The defendant contends that the assessment of the plaintiff's remuneration claim requires strict proof and verification of each item claimed, similar to taxation proceedings. The defendant relies on *Re Econ Corp Ltd*, arguing that careful scrutiny of facts and strict proof of work done is required, particularly for work claimed to have been performed by the plaintiff's firm members.

[110] The plaintiff contends that the assessment of an insolvency practitioner's remuneration does not require a taxation-like process through trial. The plaintiff has submitted a 209-page detailed statement of work and relies on authorities establishing that remuneration can be approved without requiring a taxation exercise. The plaintiff argues that while remuneration must be reasonable, a trial process is not necessary to determine this.

[111] I find the plaintiff's position to be more persuasive. The High Court in *Goh Swee Oh & Ors v. Heng Ji Keng & Anor* [2011] 6 CLJ 812; [2010] MLJU 2022 held that fees and disbursements of an insolvency practitioner can be approved without requiring a taxation exercise. In that case, the liquidators had appropriated RM93,937.95 (consisting of RM85,000 as fees and RM8,937.95 as disbursements) from the company's funds without prior court approval, and shareholders challenged this payment arguing that detailed supporting documentation was required. Justice Varghese George JC found it sufficient that "the summary of work provided did not appear to be outside the scope of normal liquidator's duties and functions, and given the time span Mr Heng and Mr Monteiro were in office, this court did not find anything exceptional or untoward to substantiate any grounds at all to strike down the same."

[112] This approach was reinforced by the Court of Appeal in *Ong Kwong Yew & Ors v. Ong Ching Chee & Ors And Other Appeals* [2018] CLJU 2247; [2018] 1 LNS 2247; [2018] MLJU 2189, a case concerning appeals relating to the remuneration and discharge of a liquidator (Yew Fooi) who had been

removed from office for bias and breach of statutory provisions, including the unilateral drawing of interim remuneration without proper consent or court sanction. The court established that while an insolvency practitioner must show the sums claimed are reasonable, this requires only that there be material which the court can analyse with an independent mind. The court emphasised that: "the overriding principle is that any such compensation must be reasonable. It therefore does not follow that the liquidator is entitled to the sum claimed as of right. The court is bound to cast an objective eye on the bill tendered in terms of the quantum claimed and be satisfied that the sum is justified." The court further held that "the onus remains on the liquidator to establish that the sum claimed is reasonable" and "the liquidator is bound to provide material on which the court can undertake a reasonable analysis" while "the court is to approach its task by determining the remuneration due on the established materials with an independent mind", confirming that this does not mandate a trial process.

[113] The Singapore High Court's decision in *Re Econ Corp Ltd*, which the defendant heavily relies upon, does not mandate conversion to writ proceedings. When Justice V.K. Rajah found insufficient particulars in that case, His Lordship ordered further affidavit evidence rather than directing a trial. This approach was subsequently endorsed by our Court of Appeal in *Emiprima Sdn Bhd*.

[114] The plaintiff has provided a comprehensive 209-page statement of work detailing the dates, personnel involved, purpose of tasks, and time expended. This level of particularity allows for proper scrutiny within originating summons proceedings. The High Court in *WTWT Sdn Bhd* held that detailed documentary evidence can enable the court to resolve disputes without requiring oral evidence.

[115] Furthermore, in *Punithavathi Ponniah v. Goh Mary & Ors* [2010] CLJU 475; [2010] 1 LNS 475; [2011] 1 MLJ 826, the High Court specifically addressed the issue of remuneration assessment, finding that if a taxation of costs had to be converted into a writ action with its attendant interrogatories and discovery, it would transform a simple and straightforward process into a more cumbersome and convoluted one. The court held that O. 38 r. 2(3) of the Rules of Court 2012 provides adequate means for cross-examination of deponents if necessary.

[116] The defendant has not demonstrated why the detailed documentation provided by the plaintiff is insufficient for assessment. Their objections primarily concern the reasonableness of time spent and rates charged – matters which can be determined through the existing evidence without requiring a trial. The Court of Appeal in *The Summit Subang USJ Management Corp* emphasised that he who asserts must prove, and the

appellant carries the legal burden to show circumstances and documentary evidence justifying conversion. The defendant has not discharged this burden.

[117] I therefore find that the assessment of the plaintiff's remuneration claim can be properly conducted within originating summons proceedings, without the need for conversion to a writ action merely to facilitate a taxation like process.

Conclusion

[118] Based on the grounds discussed above, I find that the defendant has failed to establish any substantial factual disputes that would warrant conversion of these proceedings to a writ action. The comprehensive 209-page statement of work, supported by contemporaneous documentation and detailed explanations in the plaintiff's affidavits, provides sufficient basis for the court to assess the reasonableness of the remuneration claim through the originating summons procedure. The defendant's various objections regarding verification of team members' work, the composite hourly rate, alleged overlapping entries, and other concerns can be adequately addressed through examination of the extensive documentary evidence already before the court. The possibility of a counterclaim challenging the plaintiff's appointment, while noted, does not justify converting the present remuneration proceedings, as such challenges can be pursued through appropriate separate proceedings if the defendant so chooses.

[119] The dismissal of this conversion application does not prevent the defendant from making an application for cross-examination of deponents under O. 38 r. 2 of the Rules of Court 2012, which specifically provides for cross-examination in originating summons proceedings as an alternative to converting the proceedings to a writ action. The plaintiff acknowledged in his submissions that cross-examination on his affidavits, would allow the defendant to test the evidence while maintaining the more expeditious and cost-effective originating summons procedure. Given the comprehensive documentation already before the court and the availability of cross-examination under O. 38 r. 2, converting these proceedings to a writ action would impose unnecessary costs and delay without providing any material benefit to the determination of fair remuneration. The application in encl. 14 is therefore dismissed with costs of RM10,000 for the plaintiff.